

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAMARIS CRUZ, individually and on	)	No. C-07-5688 SC
behalf of all others similarly	)	
situated,	)	
	)	ORDER GRANTING
Plaintiff,	)	DEFENDANTS' MOTION
	)	FOR SUMMARY JUDGMENT
	)	AND DENYING
v.	)	PLAINTIFF'S CROSS
	)	MOTION FOR PARTIAL
	)	<u>SUMMARY JUDGMENT</u>
MRC RECEIVABLES CORP.; MIDLAND	)	
CREDIT MANAGEMENT, INC.; A. SYRAN,	)	
an individual,	)	
	)	
Defendants.	)	
	)	
	)	

**I. INTRODUCTION**

Plaintiff Damaris Cruz brought this putative class action suit alleging violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq. See Compl., Docket No. 1. Defendants MRC Receivables Corp. ("MRC"), Midland Credit Management, Inc. ("Midland"), and James Alexander Syran ("Syran"; together with MRC and Midland, "Defendants") brought this Motion for Summary Judgment ("Motion"). Docket No. 16. Cruz opposed the Motion and moved for partial summary judgment on the issue of liability. Docket No. 20. Defendants filed a reply in support of their Motion and in opposition to Cruz's motion. Docket No. 24. Having considered the facts and the parties' legal arguments, the Court GRANTS Defendants' Motion and DENIES Plaintiff's motion.

1     **II.    BACKGROUND**

2           Plaintiff signed up for a credit card through Union Privilege  
3     and HSBC in August 2001. Approximately one year later, she was  
4     unable to pay HSBC the balance due. At that time, Plaintiff  
5     claims, HSBC notified her that it would submit a negative report  
6     to the credit bureau.<sup>1</sup> Declaration of Damaris Cruz, Docket No.  
7     21, ¶¶ 5-7 ("Cruz Decl."). Plaintiff attached to her declaration  
8     a portion of her Experian credit report purportedly demonstrating  
9     that HSBC filed a negative report on her account in June 2002. Id.  
10    Ex. A.

11           Plaintiff believes that HSBC subsequently sold Plaintiff's  
12    account to Defendant MRC in or around October 2004 and that MRC  
13    appointed Midland to collect the outstanding debt. Id. ¶¶ 8, 9.  
14    According to Plaintiff's Complaint, Midland filed a negative  
15    report with the credit bureau in March 2007. Compl. ¶ 17.

16           On April 11, May 23, and July 4, 2007, Midland sent Plaintiff  
17    collection notices, offering to settle her debt in full in  
18    exchange for immediate payment of a portion of the outstanding  
19    balance. Id. Exs. A, C, E. Each letter closes with the  
20    typewritten text:

21                   Sincerely,  
22                   A. Syran  
23                   Senior Vice President, Operations & Marketing

24    See id. Exs. A, C, E. On the reverse side of each letter, Midland  
25    included the following notice:

---

26           <sup>1</sup>Defendants object to certain portions of Cruz's declaration  
27    and to the excerpts from her credit reports attached as exhibits to  
28    the declaration. See Docket No. 25. The Court addresses these  
   objections below.

As required by law, you are hereby notified that a negative report reflecting on your credit record may be submitted to a credit-reporting agency if you fail to fulfill the terms of your credit obligations.

See id. Exs. B, D, F.

Syran is the Senior Vice President, Operations and Marketing, for Midland. Declaration of James Alexander Syran, Docket No. 17, ¶ 1 ("Syran Decl."). According to Syran, Midland sends form settlement letters to its customers, offering to settle debts for less than the full amount due. Id. ¶ 2. Syran approved the use of his typewritten name and title on Midland's form settlement letters. Id. ¶¶ 3, 4. Syran reviewed the letters Midland sent to Plaintiff. Id. ¶ 5. According to Syran, the letters accurately reflect the terms of Midland's settlement offers, and Midland would have honored the terms if Plaintiff had accepted any of the offers. Id.

Plaintiff filed this suit claiming that the letters she received from Midland violated the FDCPA because Syran's name and title appeared on the letters even though he did not actually write the letters himself, and because the letters warned of a possible negative report to the credit-reporting agencies, even though such a report had already been made and was no longer required by law.

### **III. LEGAL STANDARD**

Entry of summary judgment is proper "if the pleadings, the discovery and disclosure materials on file, and any affidavits

1 show that there is no genuine issue as to any material fact and  
2 that the movant is entitled to judgment as a matter of law." Fed.  
3 R. Civ. P. 56(c).<sup>2</sup> "Summary judgment should be granted where the  
4 evidence is such that it would require a directed verdict for the  
5 moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250  
6 (1986). Thus, "Rule 56(c) mandates the entry of summary judgment  
7 . . . against a party who fails to make a showing sufficient to  
8 establish the existence of an element essential to that party's  
9 case, and on which that party will bear the burden of proof at  
10 trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In  
11 addition, entry of summary judgment in a party's favor is  
12 appropriate when there are no material issues of fact as to the  
13 essential elements of the party's claim. Anderson, 477 U.S. at  
14 247-49.

15 A party moving for summary judgment on an issue where it does  
16 not have the ultimate burden of persuasion at trial may satisfy  
17 its initial burden of production in one of two ways. "The moving  
18 party may produce evidence negating an essential element of the  
19 nonmoving party's case, or, after suitable discovery, the moving  
20 party may show that the nonmoving party does not have enough  
21 evidence of an essential element of its claim or defense to carry  
22 its ultimate burden of persuasion at trial." Nissan Fire & Marine  
23 Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1106 (9th Cir. 2000).

24 "Once the moving party carries its initial burden, the adverse  
25

---

26 <sup>2</sup>Defendants' brief incorrectly quotes the previous text of  
27 Rule 56(c). The language of Rule 56 was amended, effective  
28 December 1, 2007. The changes were intended to be stylistic only.  
See Fed. R. Civ. P. 56 advisory committee's note.

1 party 'may not rest upon the mere allegations or denials of the  
2 adverse party's pleading,' but must provide affidavits or other  
3 sources of evidence that 'set forth specific facts showing that  
4 there is a genuine issue for trial.'" Devereaux v. Abbey, 263  
5 F.3d 1070, 1076 (9th Cir. 2001) (quoting Fed. R. Civ. P.  
6 56(e)(2)).

7  
8 **IV. EVIDENTIARY ISSUES**

9 Defendants object to paragraphs 5-12 of Cruz's declaration  
10 and to the credit report excerpts attached to it. See Docket No.  
11 25 ("Obj."). "It is well settled that only admissible evidence  
12 may be considered by the trial court in ruling on a motion for  
13 summary judgment." Beyene v. Coleman Sec. Servs., Inc., 854 F.2d  
14 1179, 1181 (9th Cir. 1988) (citing Fed. R. Civ. P. 56(e)).  
15 Defendants argue that the evidence Cruz submitted, including the  
16 majority of her declaration, is inadmissible because it is  
17 hearsay, lacks foundation, and contains speculation. See Obj.  
18 Cruz did not respond to Defendants' objections.

19 Hearsay is an out-of-court statement offered to prove the  
20 truth of the matter asserted. Fed. R. Ev. 801(c). Hearsay is not  
21 admissible evidence unless it falls into one of a limited number  
22 of exceptions defined in the Federal Rules of Evidence. Fed. R.  
23 Ev. 802; see also Fed. R. Ev. 803, 804.

24 Exhibit A to the Cruz Declaration, an excerpt from her  
25 Experian credit report dated February 8, 2008, is inadmissible  
26 hearsay. Cruz offers Exhibit A to prove that HSBC filed a  
27 negative credit report with Experian regarding Cruz's delinquent  
28

1 account. For example, Cruz states in her declaration, "In  
2 reviewing my credit report, attached hereto as Exhibit A, HSBC  
3 reported the account as charged off as of June 2002 to April  
4 2003." Cruz Decl. ¶ 6. Cruz is not an employee of either HSBC or  
5 Experian, and provides no foundation that would support allowing  
6 this document into evidence under any of the exceptions to the  
7 hearsay rule. See Baker v. Capital One Bank, No. 04-1192, 2006  
8 U.S. Dist. LEXIS 2625, at \*15-17 (D. Ariz. Jan. 24, 2006) (citing  
9 Beyene, 854 F.2d at 1183 n.4).

10 For the same reasons that Exhibit A is inadmissible,  
11 paragraphs 5, 6, 8, 9, and 10 of Cruz's declaration are also  
12 inadmissible. Paragraph 5 relates to an out of court statement  
13 purportedly made by HSBC, a non-party, that a negative report  
14 might be filed. Cruz Decl. ¶ 5. Such a statement is  
15 inadmissible. See Baker, 2006 U.S. Dist. LEXIS 2625 at \*16-17  
16 (excluding affidavit testimony based on inadmissible Experian  
17 credit report). Paragraph 6, quoted above, offers information  
18 from the inadmissible credit report excerpt as proof that HSBC  
19 filed a negative report. Cruz Decl. ¶ 6. In paragraph 8, Cruz  
20 states, "The credit report also shows that the account 'was  
21 purchased by another lender.' I believe that reference to another  
22 lender is reference to MRC Receivables Corp." Id. ¶ 8. As with  
23 paragraph 6, this is simply a quotation from an inadmissible  
24 document, followed by Cruz's unfounded speculation as to the  
25 meaning of the quotation. Nothing in Exhibit A refers to MRC. In  
26 paragraph 9, Cruz attempts to provide foundation for the assertion  
27 that MRC purchased her account by comparing Exhibit A to the  
28

1 letters she received from Defendants. Id. ¶ 9. However, Exhibit  
2 A is itself inadmissible, and nothing in paragraph 9 that is not  
3 taken from Exhibit A provides an additional basis for Cruz's  
4 assertions. Finally, paragraph 10 asserts that HSBC made  
5 statements comparable to the notices contained on the collection  
6 letters Cruz received from Defendants. Id. ¶ 10. As with  
7 paragraph 5, HSBC's purported statement is inadmissible hearsay.

8 Exhibit B to the Cruz Declaration, an excerpt from her  
9 TransUnion credit report dated February 8, 2008, is inadmissible  
10 hearsay. Like Exhibit A, Exhibit B is an out-of-court statement  
11 made by a non-party (TransUnion), which Cruz offers to prove that  
12 Defendants filed a negative credit report on her account. Cruz  
13 provides no foundation for admission of this document under any of  
14 the exceptions to hearsay defined in the Federal Rules of  
15 Evidence. See Capital Funding, VI, Inc. v. Chase Manhattan Bank,  
16 No. 01-6093, 2005 U.S. Dist. LEXIS 2212, at \*5-6 (E.D. Pa. Feb.  
17 11, 2005) (exclusion of TransUnion credit report appropriate where  
18 Plaintiff did not offer testimony of qualified witness to  
19 authenticate its contents pursuant to Federal Rule of Evidence  
20 803(6)).

21 Paragraph 12 of Cruz's declaration contains her  
22 interpretation of the inadmissible credit report she offered as  
23 Exhibit B. See Cruz Decl. ¶ 12. As Cruz does not claim to be an  
24 employee of either TransUnion or MRC, she has no foundation for  
25 these assertions. See Baker, 2006 U.S. Dist. LEXIS 2625 at \*16-  
26 17. Based on two quotations from the inadmissible TransUnion  
27 report, Cruz also asserts as a fact that the credit reporting  
28

1 notices included in the collection letters she received were  
2 false. See Cruz Decl. ¶ 12(B), 12(C). The falsity of the  
3 collection letters is the very question the Court must answer in  
4 ruling on the instant motions. The Court will not substitute  
5 Cruz's legal opinion for its own.

6 For the foregoing reasons, Defendants' objections to Exhibits  
7 A and B and paragraphs 5, 6, 8, 9, 10, and 12 of the Cruz  
8 Declaration are sustained. Those portions of the Cruz Declaration  
9 are stricken. The Court will not consider this evidence in ruling  
10 on the instant motions. Beyene, 854 F.2d at 1181.

11 Paragraphs 7 and 11 of Cruz's declaration state that she  
12 ordered the credit reports contained in Exhibits A and B from  
13 Experian and TransUnion. See Cruz Decl. ¶¶ 7, 11. Defendants  
14 object to these paragraphs as hearsay and speculation. The  
15 objections are overruled. Neither paragraph contains an out-of-  
16 court statement or speculation of any kind. Each merely serves to  
17 authenticate one of the exhibits. As the exhibits in question are  
18 inadmissible for other reasons, these statements have little  
19 impact.

20  
21 **V. DISCUSSION**

22 Cruz argues that the use of Syran's name on the letters from  
23 Midland violates 15 U.S.C. §§ 1692e and 1692f. Cruz also argues  
24 that including the notice of a possible negative report to the  
25 credit-reporting agencies violates the same statutory provisions.  
26 The Court disagrees.

27 ///



1           **A. Statutory Framework**

2           The FDCPA states that a "debt collector may not use any  
3 false, deceptive, or misleading representation or means in  
4 connection with the collection of any debt." 15 U.S.C. § 1692e.  
5 The statute then provides a non-exclusive list of prohibited  
6 practices, two of which Cruz claims Defendants committed. The  
7 first is "[t]he use or distribution of any written communication  
8 which . . . creates a false impression as to its source,  
9 authorization, or approval." Id. § 1692e(9). The second is the  
10 "use of any false representation or deceptive means to collect or  
11 attempt to collect any debt . . . ." Id. § 1692e(10). Under 15  
12 U.S.C. § 1692f, "A debt collector may not use unfair or  
13 unconscionable means to collect or attempt to collect any debt."  
14 Like section 1692e, section 1692f includes a non-exclusive list of  
15 prohibited practices. Plaintiff argues that Defendants violated  
16 section 1692f, but does not identify specific conduct listed in  
17 the statute.

18           The Court uses a "least sophisticated debtor" standard in  
19 evaluating FDCPA claims. Wade v. Reg'l Credit Ass'n, 87 F.3d  
20 1098, 1100 (9th Cir. 1996). "Although this standard is objective,  
21 the standard is lower than simply examining whether particular  
22 language would deceive or mislead a reasonable debtor." Swanson  
23 v. S. Or. Credit Serv., Inc., 869 F.2d 1222, 1227 (9th Cir. 1988).  
24 The Court must balance this debtor-friendly framework by  
25 protecting legitimate debt collectors from unreasonable  
26 interpretations of collection letters. Clomon v. Jackson, 988  
27 F.2d 1314, 1320 (2d Cir. 1993) (the FDCPA "(1) ensures the  
28

1 protection of all consumers, even the naive and the trusting,  
2 against deceptive debt collection practices, and (2) protects debt  
3 collectors against liability for bizarre or idiosyncratic  
4 interpretations of collection notices."); White v. Goodman, 200  
5 F.3d 1016, 1020 (7th Cir. 2000) ("Any document can be misread.  
6 The Act is not violated by a dunning letter that is susceptible of  
7 an ingenious misreading, for then every dunning letter would  
8 violate it. The Act protects the unsophisticated debtor, but not  
9 the irrational one."); Wan v. Commercial Recovery Sys., Inc., 369  
10 F. Supp. 2d 1158, 1162 (N.D. Cal. 2005).

11 **B. Use of Syran's Name and Title**

12 In her Opposition, Plaintiff argues that "it is deceptive and  
13 misleading to the consumer to state or imply that a high-ranking  
14 officer of the company was sending Plaintiff a collection notice  
15 when that person had nothing to do with it." Opp'n at 6.  
16 Plaintiff further asserts that the use of Syran's name and title  
17 in the collection letters violates the general prohibition of  
18 section 1692e, as well as the specific prohibitions of sections  
19 1692e(9) and 1692e(10). See id. at 7.

20 As an initial matter, the Court notes that Cruz offered no  
21 admissible evidence whatsoever supporting her claim that Syran was  
22 not personally involved in the letters. Although the letters are  
23 form letters, Syran read them, agrees that Defendants would abide  
24 by their terms, and approved of the use of his name. See Syran  
25 Decl. ¶¶ 4, 5. Syran's uncontested testimony satisfies  
26 Defendants' burden at this stage, obliging Cruz to produce  
27 evidence in response. See Nissan Fire & Marine, 210 F.3d at 1107;

1 Fed. R. Civ. P. 56(e)(2). Cruz's failure to produce such evidence  
2 is sufficient basis for the Court to grant Defendants' Motion.  
3 See Devereaux, 263 F.3d at 1076 ; Baker, 2006 U.S. Dist. LEXIS  
4 2625 at \*18-19 (granting motion for summary judgment where  
5 plaintiff offered no evidence other than inadmissible credit  
6 report and related testimony).

7 Even if Cruz had submitted evidence demonstrating Syran's  
8 lack of involvement, the Court's conclusion would be no different.  
9 The purported statutory violations here are premised on the same  
10 notion – that the least sophisticated consumer would see Syran's  
11 name and believe that a senior executive had sent the letter  
12 personally, falsely implying that the letter was therefore more  
13 important and urgent than a regular collections letter. The Court  
14 disagrees with the premise.

15 The Court reads each letter in its entirety to determine  
16 whether it is misleading or deceptive. See, e.g., Peter v. GC  
17 Servs. LP., 310 F.3d 344, 349 (5th Cir. 2002) ("When the letter is  
18 read as a whole, however, we conclude that these lines do not  
19 misrepresent, contradict, or overshadow the language explaining  
20 plaintiff debtor's statutory rights."); McStay v. I.C. Sys., Inc.,  
21 308 F.3d 188, 191 (2d Cir. 2002) ("when the letter here is read in  
22 its entirety, it contains no contradiction and creates no  
23 reasonable confusion . . . ."). Upon review of the letters in  
24 question, the Court finds that even the least sophisticated debtor  
25 would not believe that Syran had personally reviewed the debtor's  
26 account and authored the letter. Even if such a debtor did  
27 believe Syran had authored the letter, that alone would not be  
28

sufficient basis for concluding that the letter was therefore more important than it might otherwise appear. The letters are quite obviously form letters, and the Court believes this would be clear even to the least sophisticated debtor. Each letter contains a letter code, a "tear off" portion to be returned with payment, a bar code, a toll-free telephone number, Midland's hours of operation, and displays Plaintiff's account number in multiple places. See, e.g., Compl. Ex. A. Further, the letters have Midland's logo and return address at the top of the page, rather than Syran's name, and the "Acceptance Certificate" attached to the letter has Midland's mailing address, not Syran's name. Id. The actual text of the letter demonstrates that it is Midland, rather than merely Syran, making the settlement offer to Plaintiff. See id. ("settlement opportunity offered to you by Midland Credit Management," "we would like to offer you a positive and flexible option," "any of our Account Managers will be able to assist you"). By contrast, there is nothing else in any of the letters to support Plaintiff's interpretation.

As legal support for her position, Plaintiff points the Court to the decision in Campuzano-Burgos v. Midland Credit Management, Inc., 497 F. Supp. 2d 660 (E.D. Pa. 2007) ("Campuzano"). The plaintiff in Campuzano took the same position Cruz takes here, that the name of a Midland executive on a form letter violates the FDCPA, and the court agreed:

Here, the use of top executives of the company as signatories is likely meant to impress upon debtors the seriousness of the communication and will almost certainly have such an effect on at least some debtors. Because the parties

1 have stipulated that those executives did not  
2 review plaintiffs' cases, and because the  
3 signature of an executive, no less than the  
4 signature of an attorney, conveys that the  
5 executive had some actual involvement in the  
6 decision to send the letter to a particular  
7 debtor, we find that the letters here are  
8 deceptive and misleading within the meaning of  
9 section 1692e.

10 Id. at 665 (emphasis in original). The Campuzano court based its  
11 conclusion in part on a comparison between executives and  
12 attorneys:

13 But a lawyer is not the only figure who can  
14 get the debtor's knees knocking. An  
15 escalation from a lowly collection agent to a  
16 senior executive of the company could  
17 similarly demonstrate to a consumer that the  
18 debt collector means business. It is, of  
19 course, no accident that MCM used the names  
20 and titles of its executives on the collection  
21 letters at issue here. They expect, either  
22 based on research they may have conducted or  
23 just as a matter of common sense, that a title  
24 such as "President" or "Executive Vice  
25 President" connotes authority and is more  
26 likely to generate a response.

27 Id. at 663 (emphasis in original). However, there is a specific  
28 prohibition in the FDCPA against "[t]he false representation or  
implication that any individual is an attorney or that any  
communication is from an attorney." 29 U.S.C. § 1692e(3). No  
such prohibition exists for letters from non-attorney executives.  
Further, the court in Campuzano relied on the Second Circuit's  
decision in Clomon, supra, for the proposition that "'The use of  
an attorney's signature on a collection letter implies that the  
letter is 'from' the attorney who signed it; it implies, in other  
words, that the attorney directly controlled or supervised the  
process through which the letter was sent.'" Campuzano, 497 F.

1 Supp. 2d at 663 (quoting Clomon, 988 F.2d at 1321). In Clomon,  
2 however, the attorney's signature was the basis for the court's  
3 holding that the collection letter violated section 1692e(3), not  
4 section 1692e(10). Clomon, 988 F.2d at 1321. The violation of  
5 section 1692e(10) was based on other specific statements in the  
6 letter:

7 The letters stated that Jackson was  
8 "suggesting" certain measures be taken "to  
9 further implement the collection of your  
10 seriously past due account"; that Jackson had  
11 received 'instructions' from his client "to  
12 pursue this matter to the furthest extent we  
13 deem appropriate"; that Jackson had 'told'  
14 his client that it could "lawfully undertake  
15 collection activity to collect your debt"; and  
16 that Jackson had "scheduled" Clomon's debt for  
17 'immediate review and/or further action as  
18 deemed appropriate."

19 Id.

20 Another district court considered precisely the same question  
21 and came out on the opposite side of Campuzano. See Womack v.  
22 Nat'l Action Fin. Servs., No. 06-4935, 2007 U.S. Dist. LEXIS  
23 54206, at \*2 (E.D. Pa. July 25, 2007). In Womack, as here, the  
24 defendant sent a letter signed by a non-attorney executive. Id.  
25 The only basis for the alleged FDCPA violation in Womack was the  
26 use of the chief operating officer's name and title in the letter.  
27 The court granted the Defendant's motion to dismiss, finding that  
28 even the least sophisticated debtor would not be misled about the  
urgency of the letter simply because of the executive's name, and  
refused to extend the attorney-communication rules of 1692e(3) to  
non-lawyer executives. Id. at \*13-15. Even where the executive  
in question was also an attorney, and the letter included "Esq."  
after his name, another district court found that the least

1 sophisticated consumer could "not reasonably interpret the Letter  
2 as having been issued by an attorney" and that the letter was not  
3 a violation of the FDCPA merely for inclusion of the name and  
4 title. See Rumpler v. Phillips & Cohen Assocs., Ltd., 219 F.  
5 Supp. 2d 251, 257 (E.D.N.Y. 2002).

6 By contrast, nothing in Campuzano or Clomon supports a  
7 finding that the use of Syran's name and title on the letter  
8 violated section 1692e. Cruz explicitly disclaims the application  
9 of section 1692e(3), as Syran is not an attorney. See Opp'n at  
10 11-12. Beyond analogizing an executive to an attorney, the  
11 Campuzano ruling merely relied on Clomon, but such reliance is  
12 inappropriate here, where Cruz does not take issue with any part  
13 of the collection letter other than Syran's name. The Campuzano  
14 court referred to an "escalation" from a collection agent to an  
15 executive, see 497 F. Supp. 2d at 663, but all of the letters Cruz  
16 received bore Syran's name, so there was no escalation from a  
17 lower-ranked employee to Syran. Further, the Campuzano court's  
18 supposition about why the defendants used an executive's name on  
19 the letter has no bearing on the outcome. Liability does not turn  
20 on whether or not a debt collector intends to collect a debt or  
21 why a collector chooses a particular method for encouraging  
22 payment; rather, section 1692e liability is premised on what the  
23 debtor is likely to believe. Mass mailings and form letters are a  
24 reality of modern business that would be understood even by the  
25 least sophisticated debtor. That Syran might not have personally  
26 reviewed Cruz's file or authored the letters she received would  
27 not change this outcome. The Court finds the rulings in Womack

1 and Rumpler persuasive, and concludes that the use of Syran's name  
2 on the letters Cruz received was not misleading or deceptive, and  
3 therefore did not violate section 1692e. Nor was the use of  
4 Syran's name unfair or unconscionable, so Defendants did not  
5 violate section 1692f.

6 **C. Warning Regarding Possible Negative Credit Report**

7 Each of the letters Cruz received from Defendants contained  
8 the following disclosure on the back of the page:

9 As required by law, you are hereby notified  
10 that a negative credit report reflecting on  
11 your credit record may be submitted to a  
12 credit-reporting agency if you fail to fulfill  
13 the terms of your credit obligations.

14 See Compl. Exs. B, D, F. Cruz argues that the notice violates  
15 sections 1692e, 1692e(10), and 1692f. The basis for this argument  
16 is unclear. In the First Cause of Action in Cruz's Complaint, she  
17 appears to argue that Defendants' statement that they may submit a  
18 negative credit report is false:

19 33. Defendant falsely represents that a  
20 negative credit report reflecting on  
21 Plaintiff's credit report would be submitted  
22 to a credit reporting agency, violating 15  
23 U.S.C. § 1692e, § 1692e(10), and § 1692f, as  
24 an unfair and unconscionable means to collect  
25 a debt, as the negative report had already  
26 been submitted.

27 Compl. ¶ 33. In her Opposition to Defendants' Motion, in which  
28 she moves for summary judgment on the question of liability, Cruz  
focuses her argument not on whether Defendants submitted a  
negative credit report (or could lawfully do so), but on whether  
they were legally required to provide notice if they did so. See  
Opp'n at 9-11. Even within the Opposition, it is unclear whether



1 conduct that allegedly violates the FDCPA is the warning of a  
2 possible negative credit report, or the statement that such a  
3 warning is required by law. Comparison of two passages  
4 illustrates this inconsistency:

5 Defendants' collection letters, dated  
6 from April 11, 2007 through July 4, 2007, warn  
7 of a legal requirement that a negative credit  
8 report may be issued to the credit bureaus for  
9 Plaintiff's failure to fulfill the terms of  
10 her credit obligations.

11 This collection tactic is false, because  
12 a negative credit report was issued by the  
13 original creditor, HSBC, in 2002, and  
14 Defendants issued a negative credit report in  
15 2004.

16 Opp'n at 9 (citations omitted). Plaintiff then asserts that a  
17 subsequent warning is not required:

18 Defendant[s] argue[] that the subsequent  
19 representation is allowed. Defendants cite to  
20 Cal. Civ. Code § 1785.26, arguing that the  
21 statute mandates the notification of a  
22 negative credit report. It is false to  
23 represent that the law requires a further  
24 report when the negative report has already  
25 been made.

26 The statute specifically precludes a  
27 requirement that additional notice be given.

28 Id. Between the Complaint and the Opposition, Plaintiff appears  
to identify three possible problems with the notice in Defendants'  
letters:

1. Defendants falsely stated that they would submit a  
negative credit report to the credit-reporting agencies  
if Plaintiff failed to fulfill her obligation.
2. Defendants falsely stated that they were required to  
submit a negative credit report to the credit-reporting  
agencies if Plaintiff failed to fulfill her obligation.

1           3. Defendants falsely stated that they were required to  
2           notify Plaintiff that they might submit a negative  
3           credit report if she failed to fulfill her obligation.

4  
5           None of these three supports a finding that Defendants  
6           violated the FDCPA. The first two possible interpretations of  
7           Plaintiff's claim are simply false, and the third would require an  
8           unreasonable interpretation of the letter beyond that of even the  
9           least sophisticated consumer. The Court addresses each in turn.

10          The first, taken from Paragraph 33 of the Complaint, is  
11          entirely without support. Nowhere in any of the letters  
12          Defendants sent to Cruz did they say that they would submit a  
13          negative credit report. The notice only states that "a negative  
14          credit report reflecting on your credit record may be submitted."  
15          Compl. Ex. B (emphasis added). Cruz cannot base her claim for  
16          violation of the FDCPA on a statement Defendants did not make, as  
17          that would require a plainly unreasonable interpretation of the  
18          letters in question.

19          The second similarly misstates the notice. Defendants never  
20          stated that there is a "legal requirement that a negative credit  
21          report may be issued" under any circumstances. As Defendants did  
22          not make this statement, holding them liable for it under the  
23          FDCPA would also require an unreasonable interpretation of the  
24          FDCPA.

25          The third possible problem with the notice, which was never  
26          clearly stated in the Complaint, is the only one which is remotely  
27          viable. Cruz argues that because the original creditor, HSBC, and  
28

1 Defendants had both previously submitted negative credit reports  
2 to credit reporting agencies, the notice contained in the letters  
3 was not required. Therefore, Cruz concludes, it is false to say  
4 that the notice was "required by law," so Defendants violated  
5 sections 1692e and 1692e(10).

6 Defendants argue that the notice they included was permitted  
7 under both federal and California law. Mot. at 8. Whether the  
8 notice was permitted and whether it was required are distinct  
9 questions. Generally speaking, both state and federal law require  
10 that when a creditor submits negative information to a credit-  
11 reporting agency, it must provide notice to the debtor. See Cal.  
12 Civ. Code § 1785.26(b); 15 U.S.C. § 1681S-2(a)(7)(A)(i). However,  
13 both the California and federal statutes have provisions making  
14 subsequent notice unnecessary once the initial notice has been  
15 sent. See Cal. Civ. Code § 1785.26(b) ("After providing this  
16 notice, a creditor may submit additional information to a credit  
17 reporting agency respecting the same transaction or extension of  
18 credit that gave rise to the original negative credit information  
19 without providing additional notice.") (emphasis added); see also  
20 15 U.S.C. § 1681S-2(a)(7)(A)(ii) (same).

21 Cruz's claim fails for two reasons. First, Cruz offered no  
22 admissible evidence to prove that either HSBC or Defendants had  
23 previously notified her that they might file negative credit  
24 reports on her account. Nor did she offer any evidence that HSBC  
25 or Defendants had actually filed such a negative credit report.  
26 Absent such evidence, there can be no doubt that the notice  
27 contained in the collection letters Defendants sent Cruz was  
28

1 required by law, so the Court must grant Defendants' Motion on  
2 this issue. See Cal. Civ. Code § 1785.26(b); 15 U.S.C. § 1681S-  
3 2(a)(7)(A)(i); Baker, 2006 U.S. Dist. LEXIS 2625 at \*18-19.

4 Cruz's claim fails for a second significant reason. Even if  
5 Defendants had previously sent Cruz a notice that her failure to  
6 satisfy her debt might result in submission of a negative credit  
7 report, the Court would find no statutory violation. Additional  
8 negative credit reports are not prohibited, so Cruz's suggestion  
9 that her "credit report already bears the scars of her inability  
10 to pay the debt" is pointless. Not only could Defendants have  
11 submitted additional negative credit reports lawfully, they could  
12 have notified Cruz of those reports without running afoul of the  
13 FDCPA. Whether the letters said the notice was "required by law"  
14 or "permitted by law" or made no such reference at all, Cruz's  
15 credit report would not have been safe. No part of the letters  
16 was false with regard to the amount of Cruz's debt or the possible  
17 consequences of her continued failure to pay that debt. Nothing  
18 in the credit reporting notice can be seen as unfairly inducing  
19 Cruz to take an action she might otherwise not take. Read in the  
20 context of the letters as a whole, the credit reporting notices  
21 would not have been misleading or unfair to the least  
22 sophisticated consumer. As such, even if Cruz had proven that  
23 Defendants previously submitted a negative credit report on her  
24 account, which she did not, she would still have failed to prove a  
25 violation of sections 1692e, 1692e(10), and 1692f.

26 ///

27 ///

1 **VI. CONCLUSION**

2 For the foregoing reasons, the Court finds that there are no  
3 material facts requiring resolution at trial. On the evidence  
4 submitted, the Court concludes that Defendants did not violate any  
5 portion of the FDCPA. The Court therefore GRANTS Defendants'  
6 Motion for Summary Judgment and DENIES Plaintiff's Cross-Motion  
7 for Summary Judgment.

8  
9 IT IS SO ORDERED.

10  
11 Dated: July 3, 2008

12   
13 UNITED STATES DISTRICT JUDGE